

Appl. No. : 10/714759  
Filed : November 17, 2003

### REMARKS

Claims 9-21 remain pending in the present Application.

In response to the Office Action mailed February 8, 2006, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the following comments.

Claims 9-18 Fully Comply With The Requirements Of 35 U.S.C. § 112, First Paragraph

Claims 9-18 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner indicated that a “newly inserted limitation of ‘a switch to selectively enable and disable the electronic actuator from opening the air metering device between its maximum and minimum operating condition’ (Claim 9) does not [find] support in the specification.”

Firstly, Applicant wishes to note that contrary to the Examiner’s assertion, this phrase was not newly added to Claim 9. Rather, this phrase appears in the original version of Claim 9. Thus, Applicant is not entirely sure how to respond to the present rejection because the Office Action indicates that this phrase was newly added.

Further, even if the Examiner’s position is stated as the Examiner intended, Applicant submits that this rejection cannot be made final. Firstly, this is the first Office Action in which this rejection appears. Nothing in the previous Office Action indicated that there was a problem with Claim 9 with regard to section 112. Further, the Amendment filed November 21, 2005 did not include any amendments to Claim 9 with regard to this phrase. Thus, because this is the first Office Action in which this rejection has been made, Applicant submits that the finality of the present Office Action must be withdrawn.

In any event, Applicant submits that the present specification fully and clearly provides support for the subject language of Claim 9. For example, the present specification discloses that:

[[0083] The outboard motor 10 also includes a selector 232 configured to allow the ECU 230 to be switched between the electronic mode and the mechanical mode. For example, the **selector 232** can be disposed anywhere within the watercraft 12, or the outboard motor 10. The **selector 232** can include a manually operable switch having at least two positions, one corresponding to the electronic mode and one corresponding to the mechanical mode.

[0084] As such, the engine 24 can be easily switched between a mechanical throttle operation mode and an electronic throttle operation mode. For example, to operate the engine 24 in the mechanical throttle operation mode, the

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selector 232 is moved to the mechanical mode position and the bolt 202 is inserted through the connector member 200 and into the main pulley 186 to thereby engage the mechanical control section 182 to the throttle valve shaft 128. As such, the ECU 230 can disengage the clutch mechanism 226 and allow the throttle valve shaft 128 to be moved solely by the mechanical control section 182. As noted above, optionally, the ECU 230 can control the clutch mechanism 226 to allow the electric motor 222 to be used as an idle speed or a cruise controller.

(Emphasis added).

The above reproduced portion of the present specification discloses a “selector 232” which controls the operation of the clutch 226. Further, as noted above, when the clutch 226 is activated, the ECU 230 electronically controls the position of the throttle valve shaft 128. On the other hand, when the selector 232 is moved to the mechanical mode position, the ECU 230 disengages the clutch mechanism 226 and allows the throttle valve shaft 128 to be moved by the mechanical control section 182.

Thus, Applicant submits that the specification fully supports the language presently recited in Claim 9 which includes the phrase “a switch configured to selectively enable and disable the electric actuator from operating the air metering device between its maximum and minimum operating conditions.”

Thus, Applicant submits the present rejection should be withdrawn. Additionally, as noted above, if the Examiner intends to maintain this rejection, Applicant submits that the finality of the outstanding Office Action must be withdrawn.

Bayron et al. Does Not Disclose the Air Intake Device Recited By Claims 9-21.

Claims 9-21 stand rejected under 35 U.S.C. § 102(b) as unpatentable over Bayron *et al.* (U.S. Patent No. 5,803,043) (“Bayron”). Applicants respectfully traverse the present rejection.

As admitted by the Examiner, the Bayron reference fails to teach a system having both electronic and mechanical throttle actuation devices. Instead, Bayron only teaches that the subject

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engine can include either a mechanical or electronic valve actuation system. For example, as noted in Bayron,

Throttles typically use an electronic sensor to detect the amount of pressure applied to the gas pedal or the like throttle operator. This sensor signal is then output to a controller which sends an appropriate signal to the engine. **Alternatively**, a mechanical linkage exists between the gas pedal or the like throttle operator and the engine.

Bayron, col. 5, ll 60-65 (emphasis added).

With regard to the term “alternatively,” as used in column 5, line 64 of Bayron, Applicant has attached hereto the dictionary definition of the term “alternative.” As shown in the attached photocopy of Page 33 of Webster’s II New College Dictionary (2001), the term “alternative” means “1. choice between two mutually exclusive possibilities or either of these possibilities. 2. one of a number of things from which one must be chosen. -- adj. 1. necessitating or allowing a choice between two or more things.”

Thus, one of ordinary skill in the art would recognize that Bayron only discloses **either** an electronic system **or** a mechanical system, but does not suggest the combination of both. Thus, Bayron fails to teach or suggest a system having both electronic and mechanical systems for operating the air metering device.

As set forth at page 3 of the outstanding Office Action, the Examiner indicated that even though Bayron fails to teach a system having both mechanical and electrical devices, “it is considered to be an obvious duplication of a known part for its known function because one skilled in this art were to have reasonably considered providing more than one air metering device for various reasons, such as for use as a back-up device in case one device is not working properly.” However, such motivation does not appear anywhere in the prior art.

Further, Applicant wishes to point out that the Bayron reference also fails to teach any kind of device that can switch the mode of operation between an electronic actuator for controlling an air metering device and a mechanical device for controlling an air metering device.

Along these lines, Applicant wishes to point out that it has long been established that in order to make a case of obviousness of a claimed invention, “all the claim limitations must be taught or suggested by the prior art.” M.P.E.P. Section 2143.03. In the present case, nothing in the Bayron teaches or suggests a device for switching the operation of an engine between a mode

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in which an electronic actuator controls an air metering device and a mechanical mode in which a mechanical system controls an air metering device. Thus, the present rejection does not comport with the requirements of the M.P.E.P. (i.e., Section 2143.03) in that the prior art does not teach *all* the recitations in the claim.

In contrast, Claim 9 recites, among other recitations, “mechanical interface connectable to a mechanical power output request device so as to allow the air metering device to be adjusted mechanically between its maximum and minimum operating conditions, an electronic actuator capable of adjusting the air metering device between its maximum and minimum operating conditions, and a switch configured to selectively enable and disable the electronic actuator from operating the air metering device between its maximum and minimum operating conditions.”

Similarly, Claim 19 recites, among other recitations, “an air metering device configured to meter an amount of air flowing through the induction system toward the engine body, the air metering device including a mechanical interface and an electronic actuator, each of which are configured to adjust the air metering device between its maximum and minimum operating conditions, and means for selectively disengaging the mechanical interface and the electronic actuator from the air metering device.”

The non-limiting embodiment of Figure 9 of the present application illustrates such an arrangement. For example, as shown in Figure 9, the selector 232 operates as a switch enabling the electronic mode and the mechanical mode. Additionally, as noted above, paragraphs 83 and 84 of the present application describe the use of the selector 232 in switching the engine between an electronic mode and a mechanical mode.

Such an arrangement provides advantages. For example, by providing an engine with both mechanical and electronic infrastructures, a single throttle body can be used for two different kinds of engines, i.e., engines that are designed to run with an electronic throttle control and engines that are designed to operate with a mechanical throttle control. “As such, a line of engines can be manufactured less expensively by utilizing the same throttle body for both types of engines.” Paragraph [0006] of the present Application.

Applicant thus submits that Claims 9 and 19 clearly and nonobviously define over the Bayron reference. Additionally, Applicant submits that Claims 10-18, 20, and 21 also define

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over the Bayron reference, not only because they depend from one of Claims 9 or 19, but also on their own merit.

CONCLUSION

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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# Webster's II

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- ic** (-fə-mēr'ik) *adj.* [ALPHA(BETIC) + NUMERIC(AL)] 1. Consisting of alphabetic and numerical symbols. 2. *Computer Sci.* Consisting of alphabetic and numerical symbols and of punctuation marks, mathematical symbols, and other traditional symbols.
- alpha particle** *n.* A positively charged composite particle, indistinguishable from a helium atom nucleus and having two protons and two neutrons.
- alpha privative** *n.* The Greek negative prefix *a-* which occurs as *an-* before vowels.
- alpha ray** *n.* A stream of alpha particles.
- al-pha-re-cep-tor** (āl'fə-rī-sēp'tər) *n.* A site in the autonomic nervous system in which excitatory responses occur when adrenergic agents, such as epinephrine, are released.
- alpha rhythm** also **alpha wave** *n.* The most frequent electroencephalographic waveform found in recordings of the electrical activity of the adult human brain, having a frequency of 8 to 13 hertz and occurring when a person is awake and relaxed.
- al-pho-sis** (āl-fō'sis) *n.* [Gk. *alpos*, leprosy + *-osis*] Abnormal lack of skin pigmentation, as in albinism.
- al-pine** (āl'pin') *adj.* [Lat. *Alpinus* < *Alpes*, the Alps.] 1. **Alpine.** Of, relating to, or typical of the Alps or their inhabitants. 2. Of or relating to high mountains. 3. *Biol.* Living or growing on mountains above the timberline. 4. Designed for or concerned with mountaineering. 5. **Alpine.** Of or relating to competitive downhill racing and slalom skiing events.
- al-pin-ist** also **Al-pin-ist** (āl'pō-nist) *n.* A mountain climber; MOUNTAINEER. — **al'pin-ism** *n.*
- al-read-y** (āl-rēd'ē) *adv.* [ME *alredi* : *al*, all + *redi*, ready.] 1. By this or a specified time : PREVIOUSLY. 2. — Used as an intensive <Stop al-ready!>
- al-right** (āl-rīt') *adv.* Nonstandard. All right.
- Al-sa-tian** (āl-sā'shən) *adj.* Of or relating to Alsace, its inhabitants, or their culture. — *n.* 1. A native or inhabitant of Alsace. 2. Chiefly Brit. The German shepherd.
- al-sike clover** (āl'sik') *n.* [After *Alsike*, Sweden.] A plant native to Eurasia, *Trifolium hybridum*, with compound leaves and pink or whitish flowers, widely grown for forage.
- al-so** (āl'sō) *adv.* [ME < OE *ealswa* : *eall*, all + *swā*, so.] In addition : LIKEWISE. — *conj.* And in addition.
- al-so-ran** (āl'sō-rān') *n.* Informal. One that is defeated, as in a competition, election, or race.
- alt** (ālt) [Lat. *altus*, high.] *Mus.* — *adj.* Pitched in the first octave above the treble staff. — *n.* 1. The first octave above the treble staff. 2. A note or tone in the alt octave.
- Al-tai-c** (āl-tā'ik) *n.* [After the *Altai* Mountains.] A language family of Europe and Asia that includes the Turkic, Tungusic, and Mongolic subfamilies. — *adj.* 1. Of or relating to the Altai Mountains. 2. Of or relating to the Altaic language family.
- Al-tair** (āl-tīr', -tār', āl'tīr', -tār') *n.* [Ar. *al-tair* < *al-nasr al-tair*, the flying eagle.] A bright, double, variable star in the northern constellation Aquila.
- al-tar** (āl'tər) *n.* [ME *quter* < OE *altar* < Lat. *altare*.] 1. An elevated place or structure before which religious ceremonies may be enacted or on which sacrifices may be offered. 2. A table before which the divine offices are recited and on which the Eucharist is celebrated in Christian churches.
- altar boy** *n.* An attendant to an officiating member of the clergy in the performance of a liturgical service : ACOLYTE.
- al-tar-piece** (āl'tər-pēs') *n.* Artwork, as a painting or carving, placed above and behind an altar.
- altar rail** *n.* A railing in front of the altar that separates the chancel from the rest of the church.
- altar stone** *n.* Rom. Cath. Ch. A stone slab containing relics that is incorporated into an altar.
- alt-az-i-muth** (āl'tāz'ə-mōth) *n.* [ALTITUDE + AZIMUTH.] A mounting for astronomical telescopes that permits both horizontal and vertical rotation.
- al-ter** (āl'tər) *v.* -tered, -ter-ing, -ters. [ME *alteren* < Med. Lat. *alterare* < Lat. *alter*, other.] — *vt.* 1. To make different : MODIFY. 2. To adjust (a garment) for a better fit. 3. Informal. To spay or castrate. — *vi.* To become modified.
- al-ter-a-ble** (āl'tər-ə-bəl) *adj.* Capable of being changed. — **al'ter-a-bil-i-ty**, **al'ter-a-ble-ness** *n.* — **al'ter-a-bly** *adv.*
- al-ter-a-tion** (āl'tər-ā'shən) *n.* 1. The act or process of altering. 2. The condition of being altered : MODIFICATION.
- al-ter-a-tive** (āl'tər-ā'tiv, -tər-ā'tiv) *adj.* 1. Tending to bring about alteration. 2. Med. Tending to restore normal health. — *n.* Med. An alternative treatment or medication.
- al-ter-cate** (āl'tər-kāt') *vi.* -cat-ed, -cat-ing, -cates. [Lat. *altercat*, *altercat*, to quarrel < *alter*, other.] To argue vehemently.
- al-ter-ca-tion** (āl'tər-kā'shən) *n.* A vehement quarrel.
- al-ter-e-go** (āl'tər ē'gō) *n.* [Lat. *alter*, other.] 1. Another aspect of one's personality. 2. An intimate friend or constant companion.
- al-ter-na-te** (āl'tər-nāt', āl'-) *v.* -nat-ed, -nat-ing, -nates. [Lat. *alternare*, *alternat* < *alternus*, by turns < *alter*, other.] — *vi.* 1. To occur in successive turns <Day alternates with night.> 2. To change from one state, action, or place to another regularly <Alternates be-
- tween pitcher and catcher> — *vt.* 1. To perform by turns. 2. To cause to interchange regularly. — *adj.* (-nīt). 1. Happening or following successively. 2. Designating or relating to every other one of a series <alternate rows> 3. In place of another : SUBSTITUTE <an alternate method> 4. Bot. a. Growing at alternating intervals on either side of a stem. b. Arranged alternately between other parts, as stamens between petals. — *n.* (-nīt). One acting in the place of another : SUBSTITUTE. — **al'ter-na-te-ly** *adv.* — **al'ter-na-te-ness** *n.*
- alternate angle** *n.* An angle on one side of a transversal that cuts two lines, having one of the intersected lines as a side.
- alternating current** *n.* An electric current that reverses direction in a circuit at regular intervals.
- al-ter-na-tion** (āl'tər-nā'shən, āl'-) *n.* Successive change from one thing to another and back again.
- alternation of generations** *n.* Metagenesis.
- al-ter-na-tive** (āl'tər-nā'tiv, āl'-) *n.* 1. Choice between two mutually exclusive possibilities or either of these possibilities. 2. One of a number of things from which one must be chosen. — *adj.* 1. Necessitating or allowing a choice between two or more than two things. 2. Existing outside traditional or conventional institutions or systems <an alternative church> — **al'ter-na-tive-ly** *adv.*
- alternative box** *n.* An element in a flow chart that signifies a decision to be made.
- alternative school** *n.* A school that is nontraditional, esp. in educational ideals or methods of teaching.
- al-ter-na-tor** (āl'tər-nā'tər, āl'-) *n.* An electric generator that produces alternating current.
- al-the-a** also **al-thae-a** (āl-thē'ə) *n.* [Lat., mallows < Gk. *althaea* < *althein*, to heal.] 1. The rose of Sharon. 2. A plant of the genus *Althaea*, which includes the hollyhock.
- al-tho** (āl-thō') *conj.* var. of **ALTHOUGH**.
- alt-horn** (āl't'hörn') *n.* [G. *alt*, alto + *Horn*, horn.] An alto saxhorn.
- al-though** also **al-tho** (āl-thō') *conj.* [ME : *al*, all + *though*, though.] Even though <Although I was ill, I went to work>
- al-time-ter** (āl-tīm'i-tər) *n.* [Lat. *altus*, high + *-metra*.] An apparatus for determining elevation, esp. an aneroid barometer used in aircraft that senses pressure changes caused by changes in altitude. — **al-tim'e-try** *n.*
- al-ti-pla-no** (āl't-plā'nō) *n.* [Am. Sp. : Lat. *altus*, high + Lat. *planum*, plain.] A high plateau.
- al-ti-tude** (āl'ti-tōd', -tyōd') *n.* [ME < Lat. *altitudo* < *altus*, high.] 1. The elevation of an object above a reference level, esp. above sea level or above the earth's surface. 2. *often altitudes.* A high area or location. 3. *Astron.* The angular distance of a celestial object above the horizon. 4. The perpendicular distance from the base of a geometric figure to the opposite vertex, parallel side, or parallel surface. 5. A high rank or position. — **al'ti-tu-di-nal** (-tōd'n-əl, -tyōd'n-əl) *adj.*
- altitude sickness** *n.* Illness caused by an oxygen deficiency, as that encountered at high altitudes, and characterized by symptoms such as nausea, breathlessness, and nosebleed.
- al-to** (āl'tō) *n.*, pl. -tos. [Ital., high < Lat. *altus*.] *Mus.* 1. A low female singing voice : CONTRALTO. 2. A counter tenor. 3. The range between soprano and tenor. 4. A singer whose voice is within the alto range. 5. An instrument that produces sound within the alto range. 6. A part written for an alto voice or instrument.
- A word history:** *Alto* in Italian means "high." It is applied to the lowest female singing voice because the range of the female alto is the same as that of the highest male singing voice, which was originally called the alto.
- al-to-cu-mu-lus** (āl'tō-kyōō'myā-las) *n.* [Lat. *altus*, high + *CO-MULUS*.] A formation of roundish, fleecy, white or gray clouds.
- al-to-geth-er** (āl'tō-gēth'ər) *adv.* [ME *al together* : *al*, all + *together*, together.] 1. Completely : entirely <started a new life altogether> 2. With all included or counted <Altogether a dozen gifts arrived> 3. On the whole <Altogether, I'm sorry I went> — *n.* A whole. — **in the altogether.** Informal. Nude.
- al-to-ri-lie-vo** also **al-to-re-lie-vo** (āl'tō-rī-lē'vō, āl'tō-rē-lē'vō) *n.*, pl. **al-to-re-lie-vo** also **al-to-rī-lie-vi** (āl'tō-rē-lē'vī) [Ital. *alto rilievo*.] High relief.
- al-to-stratus** (āl'tō-strā'tas, -strā'tās) *n.* [Lat. *altus*, high + *stratus*.] An extended cloud formation of bluish or gray sheets or layers.
- al-tri-cial** (āl'trī-sh'əl) *adj.* [< Lat. *altrix*, *altrix*, fem. of *altor*, nourisher < *alere*, to nourish.] Naked and helpless when hatched, as young pigeons.
- al-tru-ism** (āl'trō-iz'm) *n.* [Fr. *altruisme*, prob. < Ital. *altru*, someone else < Lat. *alter*, other.] Selfless regard or concern for the well-being of others. — **al'tru-ist** (-ist) *n.* — **al'tru-is'tic** *adj.* — **al'tru-is'ti-cal-ly** *adv.*
- al-u-la** (āl'yō-lə) *n.*, pl. -lae (-lē') [NLat., dim. of Lat. *ala*, wing.] The feathers attached to the part of a bird's wing corresponding to the thumb. — **al'u-lar** (-lər) *adj.*
- al-um** (āl'əm) *n.* [ME < OFr. < Lat. *alumen*.] Any of various double sulfates of a trivalent metal such as aluminum, chromium, or iron and a univalent metal such as potassium or sodium, esp. aluminum potassium sulfate,  $\text{AlK}(\text{SO}_4)_2 \cdot 12\text{H}_2\text{O}$ , widely used industrially as clarifiers, hardeners, and purifiers and medicinally as topical astringents and styptics.
- a-lu-mi-na** (ə-lōō'mō-nō) *n.* [NLat. < Lat. *alumen*, alum.] Any of